



# California Emergency Medical Services Authority

## DATA USE AGREEMENT with LOCAL EMERGENCY MEDICAL SERVICE AGENCIES

This Data Use Agreement (DUA) is a legally binding agreement between the California Emergency Medical Services Authority (EMSA) and a Local Emergency Medical Services Agency (LEMSA).

### Background

EMSA has a responsibility to assess and coordinate the effective integration of prehospital, trauma, and hospital specialty care services such as stroke, STEMI (ST Segment Elevation Myocardial Infarction), pediatrics, and use data to promote injury control activities. LEMSAs recognize the responsibility to provide appropriate data to EMSA per the California State Health and Safety Code Statute Chapter 3 - State Administration 1797.102 and trauma data per Title 22 regulations 100257. EMSA recognizes the responsibility to ensure and maintain appropriate data security in a manner as indicated in HIPAA regulations. To accomplish these responsibilities, EMSA is developing the statewide collection of prehospital and trauma data for the purpose of studying the efficacy of EMS systems and traffic safety.

### Term of the Agreement:

The term of this Data Use Agreement is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (LEMSA) and Emergency Medical Services Authority (EMSA) for the period of \_\_\_\_\_ to \_\_\_\_\_

*WHEREAS:* the purpose of this agreement is to comply with California statute and regulations to allow EMSA to collect data and develop analysis for the following: 1) Core measures data analysis; 2) Quality Assurance data review and analysis; and 3) Data collection and analysis related to public health, traffic safety, health information exchange and trauma; and

*WHEREAS,* the LEMSAs and EMSA are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder; and

*WHEREAS,* EMSA is required by California statute 1797.102 to assess each EMS area for the purpose of determining the need for additional emergency services, coordination of emergency medical services, and the effectiveness of emergency medical services; and

*WHEREAS,* EMSA is authorized by the directives of H&S Code, Division 2.5, § 1797 et seq. to develop and maintain a database for the purpose of oversight of emergency medical services within California and for developing plans and implementation guidelines for the local emergency medical services (EMS) systems which address data collection and evaluation as noted in H&S Code § 18797.103(f); and

*WHEREAS,* EMSA is required by California statute 1797.103 to develop planning guidelines for emergency medical service systems including Data Collection and Evaluation; and

*WHEREAS,* EMSA is required by California regulation Title 22, Division 9, Chapter 13 100257 to develop and implement a standardized data collection instrument and implement a data management system for trauma; and

*NOW, THEREFORE,* in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## Contact Persons:

EMSA contact person: Kathleen Bissell, Manager - Data, Quality Improvement, and Health Information Exchange (HIE)

LEMSA contact person: \_\_\_\_\_

## Definitions

1. **Individual** has the same meaning as the term “individual” in 45 CFR Sect. 164.501 of the Privacy Rule and includes a person who qualifies as a personal representative in accordance with 45 CFR Sect. 164.502(g) of the Privacy Rule
2. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended.
3. **Data** has the same meaning as the term “limited data set” in 45 CFR 164.514(e) of the Privacy Rule.
4. **Protected Health Information or PHI** means “protected health information” in 45 CFR Sect. 164.501 of the Privacy Rule.
5. **Required by Law** has the same meaning as the term “required by law” in 45 CFR Sect. 164.501 of the Privacy Rule

## Limitations (164.502 – 164.514):

The intent of the DUA is to document the purpose(s) for which the data will be used. This DUA is in compliance with the data security and privacy standards stated by the State of California Office Health Information Integrity (CalOHII). The LEMSAs and EMSA are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulation. The intent of this DUA is to satisfy the obligations under HIPAA and to ensure the integrity and confidentiality of certain information disclosed or made available from the LEMSA to EMSA that EMSA may use, disclose, receive, transmit, maintain, or create.

## Protected Health Information:

*Protected health information* means individually identifiable health information. The permitted use of protected health information data is:

- (i) Release to the individual;
- (ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;
- (iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§ 164.502(b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure;
- (iv) Except for uses and disclosures prohibited under § 164.502(a)(5)(i), pursuant to and in compliance with a valid authorization under § 164.508;
- (v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and
- (vi) As permitted by and in compliance with this section, § 164.512, § 164.514(e), (f), or (g)

## Data Ownership

The LEMSA is the owner of the raw data. EMSA is the owner of any analyses and reports.

## Data Protection

The data provided to EMSA by the LEMSA will be maintained in a secure location accessible only to appropriate staff.

## Data Transfer

The data will be provided by the LEMSA to EMSA using a secure data transfer process.

## Record Keeping and Record Retention

None required.

## Costs

There will be no additional costs.

## **Obligations of LEMSA**

1. LEMSA agrees to provide data to EMSA in a NEMSIS compliant format.

## **Obligations of EMSA**

1. EMSA agrees not to use or disclose the data for any purpose other than the intended uses as noted in 1797.102 which is to assess each EMS area for the purpose of determining the need for additional emergency services, coordination of emergency medical services, and the effectiveness of emergency medical services, or as noted in 1797.103 which is to develop planning guidelines for emergency medical service systems including data collection and evaluation;
2. EMSA agrees to use appropriate safeguards to prevent use or disclosure of the data;
3. EMSA agrees to report to the LEMSA any use or disclosure of the data not provided for by this agreement of which it becomes aware, including without limitation, any disclosure of PHI to an unauthorized entity, within ten (10) days of its discovery;
4. EMSA agrees to ensure that any agent to whom it provides the data, including National EMS Information Systems, California State office or department data projects such as the Data De-Identification project, or other appropriate research entities, agrees to the same restrictions and conditions that apply through this DUA;
5. EMSA agrees not to identify the information contained in the data or contact any individual pursuant to 45 CFR Subtitle A - DEPARTMENT OF HEALTH AND HUMAN SERVICES, CFR Subtitle A, 164.514 (e)(4)(ii)(C)(5); and
6. EMSA will indemnify, defend, and hold harmless the LEMSA and any of the providing entities affiliates, and their respective trustees, officers, directors, employees and agents ("Indemnitees") from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure of the data or any other breach of this DUA by EMSA or any agent or person under EMSA's control.

## **Termination**

The provisions of this DUA may be terminated upon a 30 day notice.

## **Miscellaneous**

1. The parties agree to take such action as is necessary to amend this DUA as is necessary for the LEMSA to comply with the requirements of the Privacy Rule and HIPAA;
2. Any ambiguity in the agreement shall be resolved to permit the LEMSA to comply with the Privacy Rule;
3. There are no intended third party beneficiaries to this DUA. It is the parties' intent that nothing contained in this DUA gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individuals whose PHI is used or disclosed pursuant to this Agreement;
4. No provision of this DUA may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision;
5. The persons signing this agreement have the right and authority to execute this DUA and no further approvals are necessary to create a binding agreement; and

6. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this DUA shall govern. No provision of any other agreement or understanding between the parties limiting the liability of EMSA to the LEMSA shall apply to the breach of any covenant in this DUA by EMSA.

Date Signed: \_\_\_\_\_

LEMSA Official Name and Title \_\_\_\_\_

EMSA Official Name and Title: \_\_\_\_\_